IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 662 of 2005

Between:

Kella Appala Naidu S/o late Guruvulu
R/o Lumburu (Village), Palakonda (Mandal), Srikakulam District, (SC No. 41 in the name of Touthu Saraswathamma

..... PETITIONER

AND

1 Transmission Corporation of A.P., Limited, (AP TRANSCO) rep by Chief Managing Director, Vidyut Soudha, Khairtabad, Hyderabad.
2 The Assistant Divisional Engineer, Operation & ITDA, Eastern Power Distribution Company of A.P. Ltd., Seethampeta, Srikakulam District.
3 The Assistant Engineer, Operation, The Eastern Power Distribution Company of A.P. Ltd., palakonda, Srikakulam district
4 The Station House Officer, APTS. Srikakulam Srikakulam District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction more particularly one in the nature of writ of Mandamus declaring the provisional assessment notice in letter No. ADE/O&ITDA/SMPT/D.No. 708/04, dated 30-12-2004 of the 2nd respondent as highly illegal, arbitrary, unjust and contrary to Section 126 of the Electricity Act, 2003 and consequently set a side the same and pass such other order or order.

Counsel for the Petitioner:MR.D.V.NAGARJUNA BABU

Counsel for the Respondents: Mr.M.Subba Rao

The Court, at the stage of admission, made the following :

ORDER:

-

-

Petitioner is a non-trading rice mill. It is extended with electricity supply. It was inspected by the Vigilance staff of the respondents on 23.12.2004. On noticing certain irregularities, the 2nd respondent issued letter dated 30.12.2004, alleging that the petitioner is liable to pay a sum of Rs.2,51,021/-, being the cost of power alleged to have been pilfered by the petitioner. It was also indicated therein that in case the petitioner intends continuance of supply, it shall have to deposit a sum of Rs.1,25,511/-. Petitioner challenges the same.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

Petitioner is served with an order of provisional assessment. This is to be followed by a show cause notice. Thereafter, an order of final assessment has to be passed by the competent authority, duly taking into account the explanation that may be submitted by the petitioner, and holding such enquiry as is necessary. The actual liability of a consumer to pay any amount on the allegations of pilferage would arise only when an order of final assessment is passed. The disconnection of power supply on the ground that the amount indicated in the order of provisional assessment is not paid, was held to be illegal by a Division Bench of this Court in its order in W.A.Nos.452 and 477 of 2004. It was held that the order of provisional assessment is almost in the form of a show cause notice, and no liability can be fastened on a consumer, on the basis of such proceedings.

Following the same, the writ petition is allowed, directing that the respondents shall continue the power supply to the petitioner without insisting on payment of any amount shown in the order of provisional assessment. The power supply shall be continued, as long as the petitioner pays the actual consumption charges. The petitioner would be liable to pay any amount towards the value of pilfered energy, only after an order of final assessment is passed. There shall be no order as to costs.

_____

(L.NARASIMHA REDDY,J)

Date: 25-01-2005

Ts

To

1 The Chief Managing Director, Transmission Corporation of A.P., Limited, (AP TRANSCO), Vidyut Soudha, Khairtabad, Hyderabad.
2 The Assistant Divisional Engineer, Operation & ITDA, Eastern Power Distribution Company of A.P. Ltd., Seethampeta, Srikakulam District.
3 The Assistant Engineer, Operation, The Eastern Power Distribution Company of A.P. Ltd., palakonda, Srikakulam district
4 The Station House Officer, APTS. Srikakulam Srikakulam District.

5. 2CD copies